

Department of Transportation

1228.306-70

Freedom of Information Act regulation, 49 CFR part 7, (TAR) 48 CFR 1224.203).

1228.106-70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

1228.106-71 Performance and payment bonds for certain contracts.

1228.106-7100 Waiver.

(a) Pursuant to the authority vested in the Secretary of Transportation by the Miller Act, the requirements of 40 U.S.C. 3131 *et seq.* are waived, to the extent authorized in 40 U.S.C. 3134(b), with respect to contracts for the construction, alteration, or repair of vessels when the contract is made under sections 1535 and 1536 of Title 31, the Merchant Marine Act 1936 (46 App. U.S.C. 1101 *et seq.*), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 *et seq.*), regardless of the terms of the contracts as to payment or title.

(b) The Miller Act's requirement that certain contracts have payment bonds in place in order to protect the public, including the Government, material, men and laborers is not generally necessary with respect to the classes of contracts described under (TAR) 48 CFR 1228.106-7100(a). Inasmuch as the Government would directly or indirectly bear the burden of premiums for

performance and payment bonds obtained in connection with such contracts, a substantial savings can be made by waiving the requirement that they be obtained. However, unusual circumstances may arise in which either payment or performance bonds, or both, will be advantageous in connection with certain such contracts.

1228.106-7101 Exception.

A performance and payment bond for the contracts described under (TAR) 48 CFR 1228.106-7100(a) may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under (TAR) 48 CFR 1228.106-7100(a) shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

1228.106-470 Contract clause.

The contracting officer must insert the clause at (TAR) 48 CFR 1252.228-73, Notification of Miller Act Payment Bond Protection, in solicitations and contracts when payment bonds are required.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228-70 through 1252.228-72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed \$250 and the total rental cost for any single transaction is not in excess of \$2,500:

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(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer must insert the clause at (TAR) 48 CFR 1252.228-71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of persons, or damage or loss of property, unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of

(1) The aircraft, engine or propeller, or

(2) The flight of, or an object falling from, the aircraft, engine, or propeller. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (TAR) 48 CFR 1252.228-72 prescribed in paragraph (d)(1) of this section shall be used.

(1) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time must other personnel be permitted to take command of the aircraft.

1228.307-1 Group insurance plans.

(a) *Prior approval requirements.* The contracting officer shall instruct the

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contractor on a contract-by-contract basis on proposed purchases of group insurance plans. Legal advice should be sought where necessary on the advantages to the Government.

1228.311-1 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.228-7, Insurance Liability to Third Persons, as prescribed in FAR 28.311-1 unless it is waived by an official one level above the contracting officer.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.2—Contracts With Commercial Organizations

Sec.

1231.205 Selected costs.

1231.205-32 Precontract costs.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.

1231.205-32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231-70, Date of Incurrence of Costs, may be inserted in the resultant contract.